

S.I

DET#054687

9

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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Antonio Harris  
37498 Southampton  
Livonia MI 49326

Plaintiff,  
v  
F.D.I.C  
300 South Riverside Plaza  
Suite 1710  
Chicago, IL 60606

Case:2:13-cv-11721  
Judge: Cook, Julian Abele  
MJ: Majzoub, Mona K.  
Filed: 04-16-2013 At 03:07 PM  
**CMP HARRIS V FDIC ET AL (RDL)**

**REQUEST FOR JURY TRIAL**

JPMorgan Chase & Co.  
270 Park Avenue  
New York, NY 10017-2070

Marshall Isaacs in his Individual and Professional Capacities  
1650 West Big Beaver  
Troy MI 48084

Orlans Associates Inc  
1650 West Big Beaver  
Troy MI 48084

**VERIFIED PLEADINGS**

HSBC  
1515 MARKET STREET LBBY 110  
PHILADELPHIA, PA 19102

LUMINENT CAPITAL  
1515 MARKET STREET SUITE 1808  
PHILADELPHIA, PA 19102

**PLAINTIFFS CLAIM AND COMPLAINT AGAINST  
DEFENDANTS ET AL  
FOR LACK OF STANDING, CIVIL CONSPIRACY TO COMMIT  
MORTGAGE FRAUD**

Antonio Harris hereafter the Plaintiff claims that the Defendants have committed Identity Theft and Mortgage Fraud. The Defendants has no standing to collect on this invalid debt. The Plaintiff entered in to a unilateral contract with Washington Mutual Bank on or about July 17, 2006. In September 2008 Federal Deposit Insurance became Receiver for Washington Mutual Bank due to their dissolution.

### **STATEMENT OF FACTS**

1. Pursuant to the Single Family Owner Occupied Loan evidence of the SLA Schedule 4.15 A in which the Federal Deposit Insurance Corporation automatically absorbs 80% of the loss; pursuant to the Purchase Assumption Agreement
2. The quarterly reports that is required by the FDIC in reference to this loan mandated by the FDIC Shared Loss Agreement [Single Family (Schedule 4.15A) & Commercial 4.15B (NSF) will prove that Chase is not the real party in interest.
3. The Purchase Assumption Agreement between The Federal Deposit Insurance Corporation and Chase will prove to this court that the Defendants does have a valid claim in which relief can be granted, civilly conspired to commit mortgage fraud and is not the real party in interest.
4. On May 9, 2012 an Executive Operations Unit Manager Lawrence Nardi for JP Morgan Chase stated testified under oath that JP Morgan Chase that there was no assignments of mortgage, no allonges evidencing transfer of ownership from Washington Mutual to JP Morgan Chase (**SEE EVIDENCE A “OFFER OF PROOF”**).

## ARGUMENT

### I. Standing analysis

Changes in mortgage practices over the past several years have created a number of new issues in foreclosure proceedings. The issue in this case is the standing of the Defendants et al as to enforcing their claim. Serial assignments of the mortgagee's interest(s) and the securitization of mortgages have complicated what was previously a generally straight-forward standing analysis. Standing in this context requires that the Defendant provide explanation and documentation of their standing to seek relief on real estate secured debts, which they cannot do.

To legally collect on their claim, the Defendants must have both constitutional and prudential standing, as well as be the real party in interest under FED. R. CIV. P. 17 and MCL600.2041. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the Plaintiff's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision.<sup>1</sup>

Beyond the Article III requirements of injury in fact, causation, and redressibility, the party enforcing their claim must also have prudential standing, which is a judicially-created set of principles that places limits on the class of persons who may invoke the courts' powers.<sup>2</sup> As a prudential matter, the Defendant must assert "their own legal interests as the real party in interest."<sup>3</sup>

<sup>1</sup> *Valley Forge Christian Coll v Am United for Separation of Church and State*, 454 US 464, 472 (1982)(citations and internal quotations omitted).

<sup>2</sup> See *Warth v Seldin*, 422 U.S. 490, 499 (1975).

<sup>3</sup> *Dunmore v United States*, 358 F.3d 1107, 1112 (9 Cir. 2004), as found in FED. R. CIV. P. 17, which provides "[a]n action must be prosecuted in the name of the real party in interest."

To be a real party in interest, the party must have the right to sue or enforce a claim under the applicable substantive law.<sup>4</sup> To have standing in a foreclosure action a party must be the mortgagee (or assignee of the mortgagee) when it files suit.<sup>5</sup> Even if a servicer or agent has authority to bring the motion on behalf of the holder, it is the holder of the Note and Mortgage, rather than the servicer, which must be the moving party.<sup>6</sup> Additionally, however, the Purchase Assumption Agreement severed the note and the mortgage. Once the note is sold to investors and insurance claims are filed, it is no longer attached. When the Defendants attempts to foreclose, it is doing so on an unsecured “interest.” The promissory note and the Deed of Trust (or mortgages) are inseparable: “[t]he note and the mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.”<sup>7</sup> The Defendant must show that there has been a sufficient transfer of the note and the deed of trust, or that it has authority to act for the note’s holder.<sup>8</sup>

In an action on a note, the Defendant bears the burden of proving it is the owner. The Uniform Commercial Code (UCC) dictates the laws and procedures governing security interests. According to the UCC, the promissory note in this case is a negotiable instrument and must follow the UCC to be enforceable for the Defendant. UCC §3-104(a) defines a negotiable instrument as one that is payable to a named person (bank) or to order, at a definite time or on demand, and does not contain an undertaking other than the payment of money. Since the allege

<sup>4</sup> See, e.g., *U-Haul Int'l, Inc v Jartran, Inc*, 793 F2d 1034, 1038 (9th Cir 1986).

<sup>5</sup> See *In re Foreclosure Cases*, 2007 U.S. Dist. LEXIS 84011, 2007 WL 3232430 (N.D. Ohio).

<sup>6</sup> *In re Jacobson*, 402 BR 359, 366-67 (Bankr WD Wash 2009).

<sup>7</sup> *Carpenter v Longan*, 83 US 271, 274 (1872).

<sup>8</sup> *In re Vargas*, 396 BR 511, 516-17 (Bankr CD Calif 2008).

agreement here fits the definition of a negotiable instrument, it must abide by the code.

The UCC provides that the transfer of possession of a negotiable instrument with or without its endorsement, “vests in the transferee any right of the transferor to enforce the instrument.”<sup>9</sup> But “if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder.”<sup>10</sup> When the note was transferred to the Defendants, the rights of the transferor to enforce the instrument were vested in it. To summarize, the mortgage had to be properly transferred to Chase to be enforceable. However, because of the nature of the assignments of the mortgage, especially through the Federal Deposit Insurance Corporation Purchase Assumption Agreement, it has not been properly negotiated. The mortgage is missing endorsements. Therefore, Chase cannot establish that it is the holder of the note, nor can it prove that it has any rights to enforce under the transfer because without a perfected chain of title, there is no way of knowing what the rights of each party in the chain of assignments were.

### **CONCLUSION**

The Defendants et al did not have a valid claim to the allege debt nor an equitable interest with the Plaintiffs mortgage and promissory note. Pursuant to the Shared loss agreement, Chase has received compensation. Furthermore, all transactions that have occurred amongst the Defendants are a nullity. For the foregoing reasons, Chase was not the owner of the debt, had no interest in the debt, and was not the servicer, and therefore, the Plaintiff is entitled to Relief.

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<sup>9</sup> UCC § 3-203(b).

<sup>10</sup> UCC § 3-201(b).

**REQUEST FOR RELIEF**

**WHEREFORE**, The Plaintiff demands judgment against the Defendants jointly and severally as follows:

1. Judgment against Defendants as jointly and severally liable for all issues in excess of \$4,670,129.19; (Four Million, Six Hundred and Seventy Thousand, One Hundred and Twenty Nine Dollars and Nineteen Cents)
2. Costs and attorneys fees pursuant to Michigan law;
3. Rescission of the entire mortgage and note amounting to clear title to property with fixtures as a result of the aforementioned;
4. Damages for the Unfair and Deceptive Acts and Practices and
- 5 Damages in the amount of three times the interest paid and clear title to the property stemming from the exorbitant interest;
6. Judgment against Defendants for return of the down payment, and other payments, as well as interest on the above amount;
7. Pre-Judgment and post judgment interest at the maximum rate allowable by law;
8. Compensatory damages;
9. Such other and further relief available under all applicable state laws; and any relief the court deems just and appropriate.

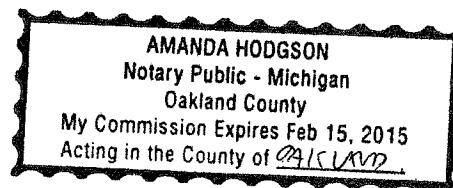
Respectfully submitted,

Antonio Harris  
Antonio Harris

Acknowledge by and sworn to before me this 16<sup>th</sup> day of April, 2013.

My commission expires 2/15/15

Amanda Hodgson  
NOTARY PUBLIC



JS 44 (Rev. 12/07)

**CIVIL COVER SHEET** County in which action arose WAUKEE

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing by local rules of court. This form, approved by the Judicial Conference of the United States in September, the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS** Antonio P Harris 37498 Southampton Livonia MI 48154

(b) County of Residence of First Listed Plaintiff WAYNE  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant FIDC ET AL  
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity  
(Indicate Citizenship of Parties in Item III)

PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other Fraud	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 410 Employment	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 415 Housing/ Accommodations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input checked="" type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (Place an "X" in One Box Only)  
 1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Title 12 USC 1710  
 Brief description of cause: The defendants did not have a valid claim to alleged debt nor an equitable interest with a promissory note.

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND \$4,670,129.19    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

4/16/13 *Antonio P Harris* FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

\_\_\_\_\_

\_\_\_\_\_